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17 OCT 2006

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In re Application of KLAUDER :  
U.S. Application No.: 10/506,708 :  
PCT Application No.: PCT/US03/09667 :  
Int. Filing Date: 28 March 2003 :  
Priority Date Claimed: 29 March 2002 : DECISION  
Attorney Docket No.: BENDS2 :  
For: METHOD FOR DESIGNING :  
GENERALIZED SPIRALS, BENDS, JOGS, :  
AND WIGGLES FOR RAILROAD TRACKS :  
AND VEHICLE GUIDEWAYS :

This is in response to applicant's "Petition Under 37 C.F.R. §1.78(a)(3)" filed 04 November 2005, which is being treated under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6), since applicant is seeking to add a benefit claim to both a prior filed nonprovisional application and prior filed provisional applications.

**BACKGROUND**

On 28 March 2003, applicant filed international application PCT/US03/09667, which claimed priority of an earlier United States application filed 29 March 2002. The thirty-month period for paying the basic national fee in the United States expired on 29 September 2004.

On 07 September 2004, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 04 November 2005, applicant filed the present petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6).

### DISCUSSION

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 37 CFR 1.78(a)(5)(ii). The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional and provisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6).

A petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

With regard to item (1) above, the requisite reference to the prior-filed applications has been included in an amendment to the first paragraph of the specification.

With regard to item (2) above, the requisite surcharge has been provided.

With regard to item (3) above, the petition states, "[T]he entire delay between the date the claim was due under 37 C.F.R. §1.78(a)(2)(ii) and the filing of this Petition and the accompanying Amendment Pursuant to 37 C.F.R. §1.78(a)(3)(i), the date the claim was filed, was unintentional." This statement is interpreted as a statement that the entire delay between the date the claim was due under paragraphs 37 CFR 1.78(a)(2)(ii) and 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

### CONCLUSION

For the reasons above, the petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) is GRANTED.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional and provisional applications, accompanies this decision.

***The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed***

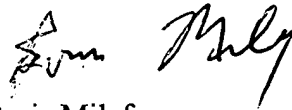
***applications, all other requirements under 35 U.S.C. §§120 and 365(c) and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.***

Any inquiries concerning this decision may be directed to the undersigned. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 2128 for appropriate action on the amendment filed 04 November 2005, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. 120 and 35 U.S.C. 119(e) to the prior-filed nonprovisional and provisional applications.



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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/506,708	09/07/2004	2128	1655	BENDS2	3	17	1

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CONFIRMATION NO. 3553

CORRECTED FILING RECEIPT



\*OC000000020478264\*

Date Mailed: 09/18/2006

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Louis T. Klauder JR., Newtown Square, PA;

Power of Attorney:

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Domestic Priority data as claimed by applicant

This application is a 371 of PCT/US03/09667 03/28/2003  
which claims benefit of 60/368,952 03/29/2002  
and claims benefit of 60/371,842 04/11/2002  
and claims benefit of 60/388,859 06/17/2002  
and claims benefit of 60/391,638 06/27/2002  
and is a CIP of 10/311,613 12/17/2002 PAT 7,027,966  
which is a 371 of PCT/US01/41074 06/20/2001  
which claims benefit of 60/212,499  
and claims benefit of 60/292,037 05/21/2001  
and claims benefit of 60/294,288 05/31/2001

Foreign Applications

If Required, Foreign Filing License Granted: 11/01/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US10/506,708**

Projected Publication Date: Not Applicable

**Non-Publication Request:** No

**Early Publication Request:** No

**\*\* SMALL ENTITY \*\***

**Title**

Method for designing generalized spirals, bends, jogs, and wiggles for railroad tracks and vehicle guideways

**Preliminary Class**

703

## **PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES**

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

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Title 35, United States Code, Section 184  
Title 37, Code of Federal Regulations, 5.11 & 5.15**

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#### **NOT GRANTED**

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